

**APPLICANT NO. \_\_\_\_\_**  
**ARKANSAS BAR EXAMINATION**  
**FEBRUARY, 2008**

2 Pages  
TORTS

Eli, a 17 year old, was driving his dad Archie's new Mercedes SUV. His dad was seated in the rear seat, and his brother Peyton was riding in the front seat. Archie was on his cell phone talking to a close personal friend, Coach Houston at Ole Miss, about Eli coming to visit Ole Miss for a recruiting visit. Eli and Peyton were both very interested in Archie's comments, and were listening carefully to Archie's conversation.

Their vehicle approached the main intersection, with the only stop light in this rural Arkansas town. As Eli proceeded toward the intersection, the yellow light changed to red as he entered the intersection. Pro Lineman, driving on the intersecting road, slowed for the red light and then when it appeared the light was going to change to green, he drove into the intersection, hitting the passenger side of the SUV. The SUV turned over and the roof caved in on the back of the vehicle.

The driver behind Eli saw the accident. He said that he believed the light was green when Eli reached the intersection, and the light turned yellow as he was entering the intersection. Eli was not injured other than scrapes and bruises. Peyton was virtually uninjured also. Archie, the father and owner of the vehicle, suffered a broken arm, a compound fracture of his leg, and was rendered unconscious. After being taken to the hospital, both Eli and Peyton were released by the emergency room doctor. Archie regained consciousness by the time he got to the hospital and remained hospitalized for a time to set his fractures and recover.

Prior to the accident, Archie was working as a TV personality advertising products, and earned in excess of \$500,000.00 per year. The doctors will testify that Archie's time off from work will last at least a year, after which he should be able to resume work. His medical expenses are \$250,000.00. Archie's pain and suffering were very severe for nearly 6 months, after which he has continued to gradually improve. His doctor says that he will recover to the point where his future pain, within medical probability, will only be intermittent, but will be with him for the remainder of his life. Archie's future medical expenses for check-ups and physical therapy will be \$10,000.00

Archie's wife, Sweetie, has cared for him through his recovery. Sweetie and Archie have had to stop their travel and other recreational activities. She has had to deal with his mood changes, lack of sexual relations, and general absence of interest in the usual conversations about the joys of their life and their great sons. Sweetie is fearful for the future, she has nightmares, suffers from lack of sleep, and anxiety from dealing with the collision. The doctor Sweetie sees for her emotional problems says that this could last for at least another 5 years.

Pro Lineman was not injured. He never saw the SUV. Pro Lineman contends he was driving the speed limit and that the light was changing when he went through the intersection. Pro Lineman also testified on deposition that he had not been drinking alcohol or doing drugs. No blood test or other alcohol/drug test was conducted on Pro Lineman or requested by the police. The officer testified that Pro Lineman had no smell of alcohol or drugs, and that his actions at the scene did not give him any reason to believe that Pro Lineman was impaired in any way.

The vehicle was a total loss. An expert will testify that the roof damage was a design and manufacturing defect which rendered the vehicle, under these circumstances, unreasonably dangerous. Archie's expert will testify that Archie would not have been rendered unconscious had the vehicle roof not caved in. They are unwilling to say that his broken arm and leg were the result of the roof collapsing, but that the vehicle turning over probably contributed to those injuries. No expert is willing to say that the vehicle turning over from the impact was the result of any manufacturing or design defect of the vehicle.

## **QUESTIONS**

- I.** What would be the liability theory for a cause of action by Archie against Pro Lineman?
  - a. Discuss a common law claim for negligence vs statutory claim for negligence.
  - b. Is it a defense for Pro Lineman if there may be more than one Defendant at fault?
- II.** What cause of action may be brought against Mercedes?
- III.** Discuss any basis for contributory negligence against Archie as a parent and as a passenger.
- IV.** What cause of action and damages does Sweetie have under these facts?
- V.** If more than one Defendant is at fault, is any Defendant responsible for all of Plaintiff's damages?
- VI.** Identify four elements of damages you believe that Archie can claim under the facts. Include the vehicle as one of the four and identify the proper measure of damages for the vehicle.

**1) Please type your answer to Torts below**

I. At issue is the theory of liability for a cause of action by Archie against Pro Lineman.

Archie's cause of action will likely sound in negligence. To establish a negligence claim, Archie must show: (i) a duty, (ii) a breach of that duty, (iii) causation, and (iv) damages. The standard is a reasonable person test. Under the standard proposed by Justice Cardozo in *Palsgraf* and subsequently adopted in most jurisdictions (including Arkansas), a person owes a duty of reasonable care to all foreseeable plaintiffs in the zone of danger (defined by time and place).

a. As previously noted, generally the standard of care owed to other persons is that of a "reasonable" person. In proper circumstances, this standard may be modified. For example, professionals such as doctors or attorneys owe a duty to act as an ordinary person in that particular field (be it law or medicine) as defined by that profession's standards. Also, minors are held to a standard of minors of like age, experience, and intellect unless, in Arkansas, they are engaged in an activity that is inherently dangerous and usually engaged in by only adults. Another example of changes to the standard of care in certain situations is when a statute governs particular conduct, such as the case here. In some jurisdictions evidence of a breach of a statute is

determined to be negligence per se. In Arkansas, breach of a statute is simply construed as mere evidence of breach of a duty. Here, if Pro Lineman had breached a statute, his breach would be evidence that he has breached his standard of care. The facts are conflicting as to whether Pro Lineman actually did, in fact, breach the statute. The police at the scene detected no traces of drugs or alcohol on Pro Lineman and he maintains that the light "was changing" when he entered the intersection. Pro Lineman only "slowed" for the red light and likely entered the intersection prematurely. If the light "was changing" that could mean that the light was still red, therefore Pro Lineman would have breached a statute in regards to running red lights and this would be evidence of negligence. However the facts also indicated that before Eli entered the intersection the light was yellow and it turned red as he entered. If Pro Lineman violated a statute, this would merely be evidence of breach of his duty, but it would make establishing a case of negligence against him much easier.

b. It would not be a valid defense to Pro Lineman if there were more than one Defendant at fault. Where the torts of two or more parties causes an indivisible harm, neither one will be able to avoid liability all together. However, where the actions of separate parties causes separate and distinguishable harm to the plaintiff, we will apportion the blame accordingly. Here, if Pro Lineman could establish that a specific amount of the injuries to Archie were the result of a defective product manufactured by Mercedes then he may be able to avoid liability on those injuries.

II. At issue is causes of action against Mercedes sounding in products liability. Archie could bring a claim against Mercedes under strict products liability. If a commercial supplier sells a product in a defective condition unreasonably dangerous then it may be held strictly liable for any damages caused to foreseeable plaintiffs. Here, Archie, as purchaser of the SUV, would certainly be a foreseeable plaintiff. The facts indicate that the SUV's collapsed roof was the result of a design and manufacturing defect which rendered the vehicle "unreasonably dangerous". Such facts strongly indicate a claim for strict products liability. In Arkansas, the comparative fault of any parties would be taken into consideration.

Archie may also have a claim for products liability sound in negligence. As noted, negligence requires a showing of duty, breach, causation, and damages. The standard of care would be that of a reasonable commercial supplier. A manufacturing defect, as opposed to a design defect, may be present on only one SUV. Such a defect may have been discoverable upon reasonable inspection of the product. If Archie could show that it would have been reasonable for a manufacturer to have discovered this defect then he would be able to assert such a claim against Mercedes.

III. At issue is the defense of contributory negligence. Contributory negligence is a complete bar to recovery in jurisdictions that still retain this common law doctrine. It basically states that due to the plaintiff's own negligence, we will not compensate him for his injuries (unless the defendant had the "last clear chance" to avoid the harm). Arkansas no longer follows the doctrine of contributory negligence and has adopted the more modern doctrine of comparative fault. This

defense allocates fault among the parties and may allow a reduced recovery for plaintiffs that were partially to blame for the injury. Arkansas uses the model in which you may recover a percentage of damages as long as your fault is not equal to or greater than 50%. If 50% or over, you are barred from recovery. Pro Lineman may be able to allocate some fault to Eli because the facts indicate that Eli was listening to Archie's phone conversation and therefore not paying as much attention to the road as he should have been. It may have been negligent for Archie to allow his minor son to drive if he had knowledge of his interest in the phone call and that he wasn't paying attention to the road. Maybe Archie should have been paying attention to whether his son was an adequate driver. I don't see much of a basis for allocating fault to Archie as a passenger.

IV. Sweetie may have a cause of action for negligent infliction of emotional distress. To show negligent infliction of emotional distress, there must be extreme emotional distress and it must be accompanied by physical manifestations. The facts indicate that Sweetie did suffer damages as a result of Archie's injury and they have resulted in physical manifestations, namely: nightmares, lack of sleep and anxiety. However, negligent infliction of emotional distress would likely require that Sweetie have been present at the accident scene when it happened and she was not. She is a of a close personal relationship with Archie, but this alone might not be enough.

If, somehow, Sweetie is allowed to establish a claim, her damages would be noneconomic. She could recover for loss of consortium and the physical manifestations of her injuries. She may be able to recover for her future emotional problems if she can establish them

beyond mere speculation.

V. At issue is the liability of any one defendant for all of the damages to Archie. This issue is regarding joint and several liability. Joint and several liability is a doctrine that allows a plaintiff to recover all of his damages from one single defendant even if two or more defendants caused the damages. Each defendant is liable for compensating the plaintiff for the full amount of his injuries, even if that defendant was less at fault than any other defendants. Arkansas has abolished joint and several liability in cases such as this. Under these facts, if more than one defendant is at fault, each defendant can only be held responsible for their particular percentage of the plaintiff's damages.

VI. At issue is the elements of damage that Archie may be able to recover for. Archie will be able to recover for:

1. Damage to his new SUV. Damage caused by Mercedes and Pro Lineman to the SUV will be recoverable. The measure of recovery will be the diminution in value of the SUV. Because the SUV was totaled, the level of damages will be the value of the new SUV at the time of the wreck minus the value of the SUV after the wreck (which will essentially be the salvage value).

2. Archie will be able to recover for the loss of consortium with his wife. This is noneconomic damage and must be shown by sufficient evidence.

3. Archie will be able to recover for his mental anguish and pain and suffering caused by the accident. These damages must be proved and may not be too speculative.

4. Archie will definitely be able to recover his medical bills for the defendant.

These damages are used to place the Plaintiff back in the condition he was in prior to the negligent act. The defendant will be responsible for these damages provided that they are requested and the Plaintiff wins.

**END OF EXAM**



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**WILLS, ESTATES, AND TRUSTS**

John and Beverly married in 1975 and had two children, Kevin born in 1977, and Susan born in 1979. John also acknowledged a son, Patrick, born in 1973 from a relationship with a woman he never married.

In 1985 John and Beverly executed separate, reciprocal (not joint) valid Wills distributing their estates, first to the surviving spouse, and then to Kevin, Susan and Patrick, share and share alike. In 1987 John and Beverly had another child, Willie. John died while on a ski trip with all of his children in 1995.

By 2005, the children were all grown and out of the home and Beverly became very involved in the search for the Ivory-billed Woodpecker in Arkansas. Believing her children to be financially successful, she decided to execute a new Will. She executed a valid Will revoking all previous Wills, but after mentioning Kevin, Susan, Patrick and Willie, she left her entire estate to the Ivory-billed Woodpecker Fund.

In 2006 she had a change of heart when she learned the Ivory-billed Woodpecker had not been spotted in Arkansas and destroyed the 2005 Will and all copies of it.

She died in 2006 while searching for the Ivory-billed Woodpecker in West Virginia.

1. Did Beverly die testate or intestate? Explain fully.
2. Assuming the 1985 Will is probated as the valid Last Will of Beverly:
  - (a) Who gets her property and in what proportion?
  - (b) Assume Patrick decides he doesn't want to accept any potential inheritance, what is he required to do to effectively reject any inheritance, and how would the rejected inheritance be distributed? Explain.

**3) Please type your answer to Wills, Estates, Trusts below****Question 3: Wills, Trust, and Estates**

1. Beverly died intestate. Once a valid will has been expressly revoked by a valid, subsequent will (must meet statutory formalities) the previous will may not be revived but will only be reinstated if the statutory formalities are met again and the will is re-executed. A will may be revoked in several different ways (a subsequent valid will that expressly revokes the previous will, manifesting an intent to revoke the previous will) and also by operation of law which includes revocation by physical act. Revocation by physical act includes destruction of a material portion of the will. In this case, Beverly first executed a valid reciprocal will in 1985 with John. However, this will was revoked by her subsequent, valid will in 2005 which expressly manifested her intent to revoke the previous 1985 will. At this point, the only way for the 1985 will to be revived was for it to be re-executed according to the statutory formalities. Then in 2006, Beverly destroyed her 2005 will and all copies of it thereby revoking that will by operation of law: a physical act of destruction. At the time Beverly's death later in 2006, there was no valid will of hers to be admitted to probate. Therefore, Beverly died intestate at her death.

Note: it is not clear in Arkansas whether the courts will apply the doctrine of dependent relative

revocation. This doctrine applies if it appears that the testator would not have revoked a will if it was due to a mistake of law by the testator and he/she manifested an intent not to die intestate. In this case, this doctrine might apply if it is clear Beverly still wanted her property to pass to her children under the 2005 will. This would be a factual question for the court to decide.

2.

(a) Kevin, Susan, and Patrick would share equally. Willie will take his intestate share. Separate, reciprocal wills are valid in Arkansas. Kevin, Susan, and Patrick will take under the will as equal beneficiaries because that was the testamentary intent of Susan as evidenced in her 1985 will. In Arkansas, pretermitted children who are born after a will has already been executed and who were not expressly mentioned in the will, will be able to take their intestate share. If one dies intestate, the first takers in intestate succession are one's descendants. Willie would therefore be able to take 1/3 of Beverly's property subject to Kevin and Susan's 1/3 interests if there was no will. However, because Patrick is mentioned in her will Susan, Patrick, Willie, and Kevin would probably take 1/4 each.

(b) If Patrick decides that he does not want to accept any of the potential inheritance he should write a disclaimer disclaiming the property of inheritance. To be valid, a disclaimer must be in writing, signed by the disclaimor, describing the interest disclaimed, and must demonstrate an intent to disclaim the property. Therefore, Patrick must produce a writing, signed by him that demonstrates an intent to disclaim the property and reasonably the interest/property disclaimed. The rejected inheritance will be distributed as though Patrick predeceased Beverly and therefore his interest would lapse (he's not her descendant so Arkansas's anti-lapse statute would not apply). Because Kevin, Susan and Patrick are not all

related siblings they are not a class of beneficiaries. There appears to be no residuary clause. In Arkansas, when a class gift beneficiary that dies before the testator his interest will pass to the rest of the class. If it is not a class then the gift will fall into the residuary and if there is no residuary then gift will fall into intestate succession. Here, however, K, S, and P are not members of a class and there is no residuary therefore the gift would fall into intestate succession and Kevin, Susan, and Willie would (Beverly's descendants) would share equally in Patrick's disclaimed inheritance.

**END OF EXAM**

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PROPERTY

Abner and Daisy Mae have recently married and moved to Arkansas from out of state. Their dream was to have a chicken farm. They located a 640-acre tract of land in Yell County. 320 acres was owned by Al Chambers and his brother Fred, and the other 320 acres was owned by General Bullmoose.

Abner and Daisy Mae purchased the 320 acres from Al and Fred Chambers, receiving a Warranty Deed from Al and his wife, and a Quitclaim Deed from Fred and his wife, each conveying their interests in the property to Abner and Daisy Mae, as husband and wife.

Abner and Daisy Mae entered into an oral agreement with General Bullmoose and his wife to purchase the 320 acres remaining in the tract. The oral agreement detailed that General Bullmoose and his wife would provide a Warranty Deed to the 320 acres to Abner and Daisy Mae upon payment of the full purchase price, which was to occur within six months of the date of their oral agreement.

Abner and Daisy Mae moved onto the 640-acre tract. There was a house and grain bins on the 320 acres that they purchased from Al and Fred.

The 320-acre purchase from the Chambers brothers was financed by Local Bank, through a promissory note secured by a mortgage on that 320 acres. Abner and Daisy Mae were looking for another source of financing to purchase the 320 acres from General Bullmoose when they discovered that there was a problem with the 320 acres that they had bought from Al and Fred. The problem was that Al and Fred had deeded the 320 acres five years earlier to the ABC Corporation by Quitclaim Deed.

Abner and Daisy Mae found additional financing with Out-of-State Bank to purchase the 320 acres from General Bullmoose and contacted him to close the sale. General Bullmoose advised Abner and Daisy Mae that he did not intend to sell the property because he had changed his mind.

Daisy Mae, distressed that her dream of being a chicken farmer seemed to be in trouble, filed for divorce from Abner and obtained the divorce 30 days later. After the divorce was final, Abner and Daisy Mae sued General Bullmoose for specific performance of his oral agreement to sell his real property to them. In the meantime, ABC Corporation filed an action to eject Abner and Daisy Mae from the 320 acres they had purchased from Al and Fred.

In the meantime, Local Bank filed to foreclose its mortgage on the same 320 acres for nonpayment of the loan by Abner and Daisy Mae, including in its suit a request that it also obtain possession of the grain bins. Abner, distressed over the litigation and his failed marriage, jumps into the Arkansas River off the bridge between Dardanelle and Russellville and drowns, leaving two surviving children by a previous marriage. He died without a will.

Daisy Mae, in the ejectment action, files a third party complaint against Al and Fred Chambers, claiming that Al and Fred must repay Daisy Mae the purchase price of the 320 acres now claimed by ABC Corporation.

Questions:

1. Do Abner and Daisy Mae have a legally sound claim against General Bullmoose for specific performance of the oral contract? Why or why not?
2. Assume for this question that Local Bank successfully forecloses on Abner and Daisy Mae. Can Local Bank take possession of the grain bins in its suit to foreclose on the real property that secures its note? What is the proper legal and factual inquiry that must be made to make that determination?
3. Does Local Bank based on the facts have a valid mortgage to foreclose? Why or why not? If not, does Local Bank have any recourse against Abner and Daisy Mae if they don't keep their loan payments current?
4. Assume for purposes of this question that Abner and Daisy Mae have good title to the Chambers property at the time of both the divorce and Abner's death. Does Abner's divorce and death affect who owns the 320 acres purchased from Al and Fred? If so, how?
5. Do Abner, his heirs, and/or Daisy Mae have a legally sound claim for breach of title against Al Chambers, Fred Chambers, or both with respect to the third party complaint? Explain why or why not as to each of the brothers.

**2) Please type your answer to Property below**

1. Abner and Daisy Mae do not have a legally sound claim against General Bullmose for specific performance. They do not have a claim because this was a contract for the sale of land. Under the Statute of Frauds, to be enforceable, all contracts for the sale of land must be in writing. This was an oral contract for the sale of land; thus, Abner and Daisy may will not be able to specifically enforce the contract.

2. In order for Local Bank to take possession of the grain bins, the grain bins must be a fixture to the realty. The degree to which a chattel is affixed to the real property determines whether or not it is a fixture. Generally, improvements to the land are not presumed to be fixtures, but the determination will turn on the realtive ease of removing the grain bins from the land. If they may be removed without causing permanent damage to the realty they will not be deemed a fixture; if removing would damage the realty they will be a fixture. The modern trend is to allow for the removal of chattels even if they would cause damage if they are used for purposes of trade and the person seeking removal will pay for the damage done by removal. Here, it appears that the grain bins would be useful for the operation of the chicken farm and may fall under the trade purposes exception. The ease of removing the bins, however, will weigh heavily on whether they are deemed to be a fixture or not. If the bins are deemed to be a

fixture, Local Bank may take possession of the bins when the foreclose on the real property.

3. With respect to mortgages, Arkansas is a race state. Thus, if Local Bank recorded its mortgage, it will be protected with respect to subsequent bona fide purchasers. Here, though, the mortgage is not valid because Abner and Daisy may do not have title to the property from Al and Fred. The general rule is that one can only convey the interest that they have in real property. Al and Fred had no interest in the property at the time they conveyed it to Abner and Daisy May; they previously deeded the property to ABC corporation. Because Abner and Daisy May do not have any interest in the property, Local Bank does not have a valid mortgage to foreclose. Although the bank can't close on the property, it may still sue Abner and Daisy may for breaching the terms of their mortgage agreement if they don't keep their loan payments current.

4. Assuming that Abner and Daisy Mae had good title to the Chambers property, both Abner's death and the divorce would impact the ownership of the land. Abner and Daisy Mae bought the land from the Chambers while they were married. The deed conveyed the property to them as husband and wife. Arkansas law presumes that any conveyance to a married couple is held as a tenancy by the entirety. Thus, Abner and Daisy held the 320 acres as tenants by the entirety. A tenancy by the entirety carries with it the rights of survivorship, but not the right to partition. Had they been married at the time of Abner's death, Daisy would have gained full ownership of the land under the survivorship element of a tenancy by the entirety. However, that was not the case here. Instead, the facts state that prior to his death, Abner and Daisy were divorced. Divorce destroys a tenancy by the entirety and upon divorce, it is transformed into a tenancy in common. Under a tenancy in common, there is no right of survivorship and the parties hold separate shares in the property. Here, both Ander and Daisy held a 1/2



undivided interest in the property. Thus, because they divorced prior to his death, Daisy will keep her 1/2 interest in the property and Abner's interest will go via the rules of intestate succession (because Abner died without a will) to his two children from his prior marriage. Each of Abner's children will have a 1/4 interest in the property.

5. Abner, his heirs and/or Daisy Mae have a claim for breach of title against Al, but not against Fred. Here, Al conveyed his share in the property by warranty deed. When land is conveyed by warranty deed, it contains six covenants two of which are that the person conveying the land was seised of the property and had the right to convey the land. Here, Al did not own the property as he'd previously conveyed it to ABC and thus, did not have the right to convey. Because Al conveyed his property by warranty deed, a claim may be brought against him. A claim may not be brought against Fred because he conveyed his interest in the land by a quitclaim deed. A quitclaim deed carries with it none of the warranties associated with a warranty deed. Instead, under a quitclaim deed, the only interest conveyed is that held by the grantor. Thus, because he had no interest and used a quitclaim deed, there is no legally sound claim to be brought against Fred.

**END OF EXAM**

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**FEBRUARY, 2008**

**3 Pages**  
**EQUITY AND DOMESTIC RELATIONS**

Husband and Wife both live in Arkansas and have been married for fifteen years. Two children were born of the marriage: Kid 1 is eighteen and will graduate from high school at the end of the current school year, and Kid 2 is fifteen years old. Both have resided with Wife since the separation which began about three months ago.

Wife filed for divorce against Husband soon after the separation. Husband is a local preacher, and Wife could not get over her view that he did not practice what he preached. Since arriving at the church which they were now serving, about three years ago, Husband had become a real jerk behind closed doors. He demeaned her; he treated her with contempt; he even physically abused her on one occasion. To everyone else he appeared the perfect husband, father, and minister. She sued him for an absolute divorce based on general indignities.

From the outset child custody was not contested: Wife would be awarded primary custody of both children. She sought awards of child support and alimony, both temporary and permanent.

Husband counterclaimed against Wife seeking an absolute divorce based on adultery. After the separation, Wife had sought pastoral counseling at a church down the street and, after a few sessions, Wife and the counselor began to "know each other" in the Biblical sense (i.e., intercourse). Husband also sought to dismiss Wife's complaint because he says she condoned whatever bad behavior he had committed. Truthfully, when Wife first went to see the pastoral counselor, he encouraged her to turn the other cheek, go back to Husband, reconcile physically and spiritually, and forgive Husband. She did. She went over to Husband's new apartment, said all the nice things, slept with him, but realized he was still the same when they got out of bed and decided to push forward with the divorce.

Husband also filed a separate civil case against the counselor/pastor based on a claim of alienation of affections.

As far as property issues are concerned, the only hard-fought issue was a savings account which Husband brought into the marriage. At the time of the marriage, Husband's savings account had \$100,000 in it. The savings account remained in the Husband's name alone, and Wife was not a title holder to the account at any time. During the marriage, however, Husband drew funds from the account for family expenditures ( there is now nothing to show for it). At its lowest point, the savings account was drawn down to \$40,000. At the time of the separation, Husband replaced all of the withdrawn funds with earnings made during the year from speaking on a lecture tour, returning the balance to \$100,000. The asset in the savings account was cash, not stocks, bonds, or any other investments. Over the years of the marriage the Husband sometimes withdrew funds for family vacations and home improvements. The balance fluctuated up and down [e.g. up to \$60,000, down to \$50,000, up to \$70,000, down to \$45,000, etc.]. Husband wants the \$100,000 he brought into the marriage. Wife claims all assets in the account should be split evenly.

On child support issues, Wife claims she should have support set by the chart for the oldest child indefinitely and the other until termination at the usual time under the law. Her claim for an indefinite time period for the oldest child is based on the fact that Kid 1 has such mental and physical disabilities that he is unable to live independently. Husband argues that child support should terminate at the usual time under the law for children without disabilities. It is undisputed that as an adult the disabled child will qualify for assisted living outside the home and government benefits sufficient to pay Kid 1's living expenses.

As for the amount of child support, Husband says that one million dollars he recently received from the sale of a farm he inherited from his father should not be counted as net income under the law for purposes of calculation of child support.

## **QUESTIONS**

1. Who will likely obtain a divorce against whom and why? Discuss the weaknesses and strengths of the parties' claims against the other for an absolute divorce.
2. What effect will the granting of a divorce in favor of or against the Husband have on: (1) the property division issues; and (2) the judge's decision whether to award alimony.
3. Discuss the merits (or lack thereof) of Husband's motion to dismiss Wife's divorce.
4. Discuss the merits (or lack thereof) of Husband's separate civil case against the pastor/counselor.
5. Who will likely receive the money in the savings account, how much, and why? Explain thoroughly, yet concisely, the rationale leading to your conclusion.
6. When will child support likely stop for Kid 1? For Kid 2? Explain thoroughly, yet concisely, the basis for your conclusion.
7. Will the one million dollars be considered income for child support purposes? Why or why not? Be sure to state the general rule regarding monies received such as the proceeds from this sale and discuss all options under the law for resolving the issue.

**4) Please type your answer to Equity and Domestic Relations below****1. Who will likely obtain a divorce against whom and why? Discuss the weaknesses and strengths of the parties' claims against the other for an absolute divorce.**

It seems likely that the Husband will obtain a divorce against the Wife because the Husband's grounds will be more easily shown than the Wife's. General indignities and adultery are both grounds for absolute divorce in Arkansas. To show general indignities the wife would have to introduce evidence and provide corroborating witnesses that show that the husband's conduct against her rose to the level of continuous, systematic and habitual cruelty so bad that it rendered the marriage life intolerable, and this must be shown with specific instances of conduct not just with general statements. To show adultery, the husband must introduce evidence that shows the wife had the inclination and opportunity to commit adultery.

Here the facts clearly state that the husband demeaned the wife, treating her with contempt and abusing her on one occasion. While abuse is clearly a intolerable condition, it occurred only once and was not therefore continuous. The other statements are not very specific. Simply being a jerk behind closed doors will likely not rise to the level of systematic and continuous cruelty nor will the view of the wife that the husband is not practicing what he preaches. More importantly, even if the above activities have been going on for three years and might be viewed as rendering the marriage life intolerable, the statements cannot be corroborated in the divorce proceeding since the facts also state that to everyone else husband appeared to be acting as the perfect husband, father, and minister.

On the other hand, the adultery claims against the wife are more easily shown. The facts

indicate that after the separation, the wife and the counselor were actually having intercourse. Even though this occurred after the separation, it is still during the marriage and would constitute grounds for divorce. The wife had an inclination to commit adultery because she was unhappy with her marriage as evidenced by the seeking of help. She also had the opportunity to commit adultery because she had several sessions with the counselor. These things will likely be easy to corroborate in court since the facts state the affair is actual, and because of this, the husband likely has stronger grounds for divorce against the wife.

**2. What effect will the granting of a divorce in favor of or against the Husband have on: (1) the property division issues; and (2) the judge's decision whether to award alimony.**

The granting of the divorce in favor of the husband should not effect the property division or the judge's decision to award alimony. Fault is not a factor the courts of Arkansas use in determining either of these things at divorce. The courts will make an equitable division of property which will mean that the spouses will likely each take 50% of the marital property. However, courts do have broad discretion to adjust the division of property if they feel it will be more equitable. Also, fault is not a factor in deciding alimony. Some of the factors that the court considers include the potential individual earning capacity of each spouse, the disposition of the marital property, the education level of each spouse, the separate property of each spouse, and the lifestyle the spouses are accustomed to living.

**3. Discuss the merits (or lack thereof) of Husband's motion to dismiss Wife's divorce.**

There is definitely a lack of merit to the Husband's motion to dismiss. He is seeking to dismiss using the defense of condonation. Condonation occurs when a spouse forgives and reconciles with the offending spouse over past wrongs. The theory is that the forgiving spouse is estopped from asserting those past wrongs as grounds for divorce. That defense

has been abolished in Arkansas and is no longer available to husband.

**4. Discuss the merits (or lack thereof) of Husband's separate civil case against the pastor/counselor.**

The Husband's claim of alienation of affection is also likely to fail. Alienation of affection at common law occurred when a third party materially interfered with the marriage relationship both emotionally and physically. While the counselor did have an affair with the wife and would likely have been found liable of this previously, I am almost certain that Arkansas has abolished this cause of action. I would have to consult the statute to be certain though.

**5. Who will likely receive the money in the savings account, how much, and why? Explain thoroughly, yet concisely, the rationale leading to your conclusion.**

The money in the savings account will likely be split 50-50 as Arkansas courts make equitable distribution of marital property. The issue here is whether the Husband's separate property was transformed into marital property. Property owned before the marriage is considered separate property, and all property acquired during the marriage is considered marital property even if it is individually earned by a single spouse. Separate property remains so during the marriage unless it becomes so commingled with marital property that it is impossible to trace what is separate property and what is marital property. Here, although the Husband's account with the \$100,000 was originally considered separate property, during the marriage he has used the funds for family expenditures including family vacations and home improvements. The facts indicate that there is nothing to show for these expenditures, so all of the money used for these things cannot be traced to a different asset. He effectively converted his separate property to marital property through these expenditures. The account balance fluctuation during marriage also indicates that at times the Husband added marital assets to the

account. Additionally, he replenished the account at separation with assets earned through work during the marriage which would be marital property. Thus, the account is now, although back at \$100,000, mixed with marital and separate property. The account is purely cash and so it would be practically impossible to determine what part of the money is marital and what is remaining from his initial separate property. Even though the account is solely in the Husband's name, the entire balance of the account is now marital property, and as such should be split equitably by the court.

**6. When will child support likely stop for Kid 1? Kid 2? Explain thoroughly, yet concisely, the basis for your conclusion.**

Child support for Kid 1 should likely continue indefinitely, and child support for kid 2 should continue until he reaches 18 or graduates from high school. The rule in Arkansas is that child support continues until the child reaches majority (18) or graduates from high school whichever occurs later. The rule can be modified though by express agreement of the parents or by the court in certain instances which include the child's physical disabilities. Here, Kid one has such mental and physical disabilities that he is unable to live independently. While husband argues that as an adult the disabled child will qualify for assisted living outside the home and government benefits to pay for living expenses, the court would likely allow for continued support past Child 1's graduation until these benefits take effect, and then the support order could be modified accordingly. Allowing support past the usual limit of high school graduation (which has not occurred for Kid 1 yet, so he should at least get support until then) is allowed at the discretion of the court. Support for Kid 2 should terminate according to the general Arkansas law stated above.

**7. Will the one million dollars be considered income for child support purposes? Why**

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or why not? Be sure to state the general rule regarding monies received such as the proceeds from this sale and discuss all options under the law for resolving the issue. yes, he got the money as income will be viewed as such for support. he could just keep land, or put money in trust

**END OF EXAM**